

Subpart E—Agency Treatment of Information Claimed To Be Confidential

§ 512.20 How does the agency treat information submitted pursuant to this part before a confidentiality determination is made?

(a) Information received by NHTSA, for which a properly filed confidentiality request is submitted, will be kept confidential until the Chief Counsel makes a determination regarding its confidentiality. Such information will not be disclosed publicly, except in accordance with this part.

(b) Redacted copies of documents submitted to NHTSA under this part will be disclosed to the public.

§ 512.21 How is information submitted pursuant to this part treated once a confidentiality determination is made?

(a) Once the Chief Counsel makes a determination regarding the confidentiality of the submitted information, all materials determined not to be entitled to confidential protection will be disclosed to the public in accordance with the determination, unless a timely petition for reconsideration is received by the agency.

(b) Upon receipt of a timely petition for reconsideration under § 512.19 of this part, the submitted information will remain confidential, pending a determination regarding the petition.

(c) Should the Chief Counsel, after considering a petition for reconsideration, decide that information is not entitled to confidential treatment, the agency may make the information available after twenty (20) working days after the submitter has received notice of that decision from the Chief Counsel unless the agency receives direction from a court not to release the information.

[68 FR 44228, July 28, 2003, as amended at 69 FR 21425, Apr. 21, 2004]

§ 512.22 Under what circumstances may NHTSA modify a grant of confidentiality?

(a) The Chief Counsel may modify a grant of confidentiality based upon:

(1) Newly discovered or changed facts;

- (2) A change in the applicable law;
- (3) A change in class determination, pursuant to § 512.16;
- (4) The passage of time; or
- (5) A finding that the prior determination is erroneous.

(b) If the Chief Counsel believes that an earlier determination of confidentiality should be modified based on one or more of the factors listed in paragraph (a) of this section, the submitter of the information will be notified in writing that the Chief Counsel has modified its earlier determination and of the reasons for the modification, and will be informed that the information will be made available to the public in not less than twenty (20) working days from the date of receipt of the notice of modification. The information may be released publicly on an earlier date, if the Administrator determines in writing that the public interest requires that the information be made available to the public on such date. The submitter may seek reconsideration of the modification, pursuant to § 512.19.

§ 512.23 Under what circumstances may NHTSA publicly release confidential information?

(a) Information that has been claimed or determined to be confidential under this part may be disclosed to the public by the Administrator notwithstanding such claim or determination, if disclosure would be in the public interest as follows:

(1) Information obtained under chapter 325, 327, 329 or 331 of title 49 of the United States Code (formerly under the Motor Vehicle Information and Cost Savings Act) may be disclosed when that information is relevant to a proceeding under the chapter under which the information was obtained.

(2) Information obtained under chapter 301 of title 49 of the United States Code (49 U.S.C. § 30101 *et seq.*), relating to the establishment, amendment, or modification of Federal motor vehicle safety standards, may be disclosed when relevant to a proceeding under the chapter.

(3) Except as specified in the next sentence, information obtained under Chapter 301 of title 49 of the United

States Code (49 U.S.C. 30101 *et seq.*), related to a possible defect or noncompliance, shall be disclosed when the Administrator decides the information will assist in carrying out sections 30117(b) and 30118 through 30121 of title 49 or is required to be disclosed under 30118(a) of title 49, except as provided in paragraph (a)(4) of this section.

(4) No information will be disclosed under paragraph (a) of this section unless the submitter of the information is given written notice of the Administrator's intention to disclose information under this section. Written notice will be given at least twenty (20) working days before the day of release, unless the Administrator finds that shorter notice is in the public interest. The notice under this paragraph will include a statement of the Administrator's reasons for deciding to disclose the information, and will afford the submitter of the information an opportunity to comment on the contemplated release of the information. The Administrator may also give notice of the contemplated release of information to other persons and may allow these persons the opportunity to comment. In making the determination to release information pursuant to this section, the Administrator will consider ways to release the information that will cause the least possible adverse effects to the submitter.

(b) Notwithstanding any other provision of this part, information that has been determined or claimed to be confidential may be released:

- (1) To a committee of Congress;
- (2) Pursuant to an order of a court of competent jurisdiction;
- (3) To the Office of the Secretary, U.S. Department of Transportation and other Executive branch offices or other Federal agencies in accordance with applicable laws;
- (4) With the consent of the submitter of the information; and
- (5) To contractors, if necessary for the performance of a contract with the agency or any Federal agency, with specific prohibitions on further release of the information.

APPENDIX A TO PART 512—CERTIFICATE IN SUPPORT OF REQUEST FOR CON- FIDENTIALITY

Certificate in Support of Request for Confidentiality

I _____, pursuant to the provisions of 49 CFR part 512, state as follows:

(1) I am (official's name, title) and I am authorized by (company) to execute this certificate on its behalf;

(2) I certify that the information contained in (pertinent document(s)) is confidential and proprietary data and is being submitted with the claim that it is entitled to confidential treatment under 5 U.S.C. 552(b)(4) (as incorporated by reference in and modified by the statute under which the information is being submitted);

(3) I hereby request that the information contained in (pertinent document(s)) be protected for (requested period of time);

(4) This certification is based on the information provided by the responsible (company) personnel who have authority in the normal course of business to release the information for which a claim of confidentiality has been made to ascertain whether such information has ever been released outside (company);

(5) Based upon that information, to the best of my knowledge, information and belief, the information for which (company) has claimed confidential treatment has never been released or become available outside (company); (except as hereinafter specified);

(6) I make no representations beyond those contained in this certificate and, in particular, I make no representations as to whether this information may become available outside (company) because of unauthorized or inadvertent disclosure (except as stated in paragraph 5); and

(7) I certify under penalty of perjury that the foregoing is true and correct. Executed on this the _____ day of _____, _____. (If executed outside of the United States of America: I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct). (signature of official)

APPENDIX B TO PART 512—GENERAL CLASS DETERMINATIONS

The Chief Counsel has determined that the following types of information would presumptively be likely to result in substantial competitive harm if disclosed to the public:

- (1) Blueprints and engineering drawings containing process and production data where the subject could not be manufactured without the blueprints or engineering drawings except after significant reverse engineering;